

PENALTY FOR FALSE STATEMENT: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. 1001 (see also 18 U.S.C. 286, 287).

(Approved by the Office of Management and Budget under control number 2133-0012)

[G.O. 89, Rev., 35 FR 11558, July 18, 1970, as amended at 35 FR 11686, July 22, 1970; 47 FR 25530, June 14, 1982]

**§355.3 Criteria to be applied in support of stock data in affidavit.**

(a) The same criteria should be observed in obtaining information to be furnished for stockholders named (direct ownership of required percentage of shares of stock of each class or series) in the Affidavit as those observed for the primary corporation. If, on the other hand, the “fair inference rule” is applied with respect to stock ownership (see *Collier Advertising Service, Inc. v. Hudson River Day Line*, 14 Fed. Supp. 335), the extent of U.S. citizen ownership of stock should be ascertained in the requisite percentage (65 percent for foreign operation and 95 percent for coastwise operation) in order that the veracity of the statutory statements made in the Affidavit (paragraph 5) may be relied upon by the Maritime Administration.

(b) When applying the fair inference rule (where there are more than 30 stockholders, except where one or more of such number actually owns the controlling or 75 percent interest) in order to prove U.S. citizen ownership in the required percentages (1) for foreign operation, 65 percent of the shares of stock of each class or series must be shown to be held by persons with registered addresses within the United States to prove that 51 percent or controlling interest is vested in citizens of the United States and (2) for coastwise operation, 95 percent of the shares of stock of each class or series must be shown to be held by persons having registered addresses within the United States to prove that 75 percent of the interest in the corporation is vested in citizens of the United States.

(c) If the primary corporation is consecutively owned by several “parent” corporations (holders of 100 percent of the stock of each or all classes or series

of stock issued and outstanding), the facts should be given in proper sequence either by chart or in narrative form, revealing the facts of stock ownership. The information with respect to the ultimate parent should include data relative to the basis upon which controlling or 75 percent (depending upon whether the primary corporation operates in the domestic or foreign commerce) is established, together with the names of the owners of record or beneficial owners of 5 percent or more of each class or series of stock, if more than one class or series, and statement that such owners are citizens of the United States. In any case where different classes or series of stock exist, each class or series shall be treated depending upon whether “closely held” or “publicly held,” individually in applying the fair inference rule, if applicable, or giving the relevant information with respect to United States citizens owning of record 51 percent or 75 percent of the interest.

**§355.4 Changes in citizenship data.**

It shall be incumbent upon the parties filing affidavits under this part to apprise the Maritime Administration promptly in writing relative to changes in data last furnished with respect to officers, directors, and stockholders holding 5 percent or more of the issued and outstanding stock of each class or series, together with statements concerning the citizenship status thereof.

**§355.5 Additional material.**

If additional material is determined to be essential to clarify or support the evidence of U.S. citizenship, such material shall be furnished by the aforementioned primary corporation upon request by the Maritime Administration.

**PART 360—TRANSFER OF MARINE EQUIPMENT TO SHIP OPERATORS AND SHIPYARDS**

Sec.

360.1 Purpose.

360.2 Definitions.

360.3 Policy.

360.4 Procedure.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

## Maritime Administration, DOT

## § 360.4

SOURCE: General Order 84, 2d Rev., 36 FR 5790, Mar. 27, 1971, unless otherwise noted.

### § 360.1 Purpose.

To set forth the policy and procedures governing the transfer of marine equipment by the Maritime Administration to operators of merchant ships and to shipyards for the construction or repair of merchant ships, on the basis of replacement at the earliest possible date.

### § 360.2 Definitions.

(a) The term *transfer*, as used herein, shall be deemed to be a transfer of possession with passage of title upon delivery of the equipment to the operator or shipyard, and with obligation for replacement of the equipment by the transferee.

(b) The terms *marine equipment* and *equipment*, as used herein, shall be deemed to include machinery, spare parts, and equipment required for the operation, construction, or repair of merchant ships.

### § 360.3 Policy.

(a) Transfers of marine equipment owned by the Maritime Administration will be made, upon request, only in cases of emergency under the following conditions:

(1) There must be a need which cannot be filled within a reasonable time by a manufacturer or other source;

(2) The transferee shall agree to stand all costs incurred in connection with the transfer;

(3) The transferee shall agree to take possession and custody of the equipment at a time and place designated by the Maritime Administration, and there shall be no liability on the part of the Maritime Administration for any failure of the equipment thereafter; and

(4) The equipment transferred shall be replaced by the transferee, at his expense, at the earliest practicable date and at a point designated by the Maritime Administration, with new equipment of the same type and design or with equipment determined by the Maritime Administration to be suitable for the same use as the equipment transferred, in a condition satisfactory to the Maritime Administration and in

compliance with American Bureau of Shipping and U.S. Coast Guard standards.

(b) Transfers which meet the above requirements may be made (1) to operators of U.S.-flag merchant ships and shipyards for the construction or repair of U.S.-flag merchant ships, and (2) to foreign-flag merchant ships and U.S. shipyards for the construction or repair of foreign-flag merchant ships, when it is determined by the Maritime Administration, in consultation with other Government agencies, as appropriate, that the transfer would be beneficial to the American merchant marine, the defense effort, or otherwise in the national interest.

(c) The transferee shall furnish a deposit to the Maritime Administration in the amount of the current acquisition value (new) of the equipment, as determined by the Maritime Administration, plus 10 percent of such amount to cover expenses which may be incurred by the Maritime Administration in connection with the transaction, including possible damages to Maritime Administration properties, and, where applicable, an additional amount equal to the estimated cost of closing any openings or reassembling any machinery made necessary by the transfer. This deposit, less the amount of any expenses or damages incurred by the Maritime Administration in connection with the transfer, will be returned to the transferee upon satisfactory replacement of the equipment.

(d) The transferee shall pay to the Maritime Administration a service charge in the amount of \$200 to cover administrative and operating expenses incurred in processing the transfer. This amount is to be deposited to the credit of the Government, and will not be returned to the transferee.

### § 360.4 Procedure.

(a) Requests for the transfer of marine equipment shall be submitted, in writing, to the Chief, Division of Reserve Fleet, Maritime Administration, Washington, DC 20590, or to the appropriate Region Director in the field, and shall include the following information:

(1) Name and address of organization requesting the transfer;

(2) Description of the equipment required;

(3) Time and method of replacement of equipment;

(4) Name, type, and flag of ship involved, port at which installation is to be made, and trade route and type of trade in which ship is engaged; and

(5) A detailed explanation of the need, establishing that an emergency exists and that the equipment cannot be obtained elsewhere in time for the ship to sail on schedule or to continue a voyage.

(b) Upon determination by the Maritime Administration that the justification for the transfer meets the policy requirements of §360.3 and that the equipment is available for transfer, the authorized transfer official shall obtain from the applicant, in writing, an agreement to the conditions of the transfer, including the conditions set forth in §360.3 and such other conditions as may be appropriate, including the foregoing definition of the term “transfer.”

(c) The transferee shall transmit to the Maritime Administration, Washington, D.C., or the appropriate Region Director a certified or cashier's check payable to “Maritime Adm.-Transportation” in the amount of the required deposit and the service charge, as determined under §360.3 (c) and (d).

(d) Upon approval of the transfer, the Chief, Division of Supply Management or appropriate Region Director shall authorize the issuance of appropriate shipping and other necessary instructions for the transfer of the equipment to the ship operator or shipyard.

(e) Upon determination that the equipment transferred has been satisfactorily replaced and all conditions of the transfer have been complied with, the Maritime Administration will refund to the transferee the amount of his deposit less such deductions as are determined by the Maritime Administration to be appropriate.

## PART 370—CLAIMS

### Subpart A—Processing of Time-Barred Claims

Sec.

370.1 Definitions.

370.2 General policy.

### Subpart A—Processing of Time-Barred Claims

#### §370.1 Definitions.

(a) *Time-barred claim* means a claim against the Government, for which the statutory period for filing suit has expired.

(b) *Contract* includes every agreement or contract entered into by the Maritime Administrator and/or Maritime Subsidy Board, the Director National Shipping Authority or their delegatee.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

[C.O. 102, 34 FR 6928, Apr. 25, 1969]

#### §370.2 General policy.

(a) Time-barred claims shall be rejected, except as follows:

(1) A time-barred claim which could be asserted in court by way of set-off against a claim in favor of the United States arising out of the same contract may be considered in an overall settlement where settlement will result in a net payment to the United States, provided claimant releases the United States from all claims arising from or in any way connected with said contract.

(2) Time-barred claims in favor of friendly foreign governments shall not be rejected solely because they are time-barred. However, should any such government adopt the practice of asserting the statute of limitations as a defense against claims of the United States, the time-barred claims of that government shall be rejected.

(3) Time-barred claims arising under Second Seamen's War Risk insurance (or similar earlier types of crew insurance) where the policy was issued or the risks were assumed by the Maritime Administration (or its predecessors), shall not be rejected where the beneficiaries were precluded from receiving the proceeds of the policy by reason of regulations or orders of the U.S. Government (i) by reason of the beneficiary being physically or mentally unable to present the claim, (ii) by the beneficiaries being unaware of their entitlement to the proceeds in question, or (iii) where the claim is not “stale” under general principles of equity.